

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND**

IN RE:

DAVID W. WAGNER

Debtor

**:
:**

BK. NO. 18-10071

CHAPTER 7

**TRUSTEE'S RESPONSE TO DEBTOR'S
OBJECTION TO CLAIMS**

Now comes Stacy B. Ferrara, Chapter 7 Trustee in the above matter, and hereby responds to the fifty (50) Objections to claims (#2, 3, 4,5,6,7, 8,10,11,12,13,16,19,20,22,23,24,25,26,27, 28, 29, 30, 31, 33, 34, 36, 37, 38, 39, 40, 41, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and 64 (collectively the "Claims")) filed by the Debtor pursuant to Fed. R. Bankr. P. 3007. The Claims, as filed, generally seek payment for unpaid wages, unpaid compensation, and reimbursements, and for the return of funds allegedly obtained through the fraud of the Debtor. The Debtor has filed blanket objections to the Claims asserting they are: a.) not an obligation of the Debtor as he did not personally employ each Claimant; b.) do not attach any documentation in support of each Claim, nor do they include a summary of each claim; and c.) the Debtor has not committed any fraud against the claimants. Of the fifty (50) Objections to the Claims that have been filed, 20 of the claimants have filed complaints against the Debtor objecting to the discharge of their debt pursuant to 11 U.S.C. §523 or §727 based in full, or part, on the Debtor's alleged fraud. (The Debtor has raised similar defenses in those proceedings asserting the debt so alleged is not the obligation of the Debtor.) The remainder of the fifty (50) claimants appear to be unrepresented by counsel.

The Trustee has conducted numerous Creditors' Meetings in this matter, but has not yet concluded said Meeting as the Trustee and her counsel have made numerous requests for

information and documentation from the Debtor that remain unsatisfied. The next, and hopefully last, Creditor's Meeting is scheduled for February 13, 2019. The Debtor has testified under oath that he filed his bankruptcy pro se, and prepared his own original schedules and Statement of Financial Affairs (Doc 15) on January 15, 2018 (the "Doc 15"). He acknowledge that he signed Doc 15 under the pains and penalties of perjury, and that the contents were true and accurate to the best of his knowledge. Substantially all of the aforementioned Claims were scheduled on Doc 15 by the Debtor as "contingent" "Debt incurred by him" with an "unknown" balance. Not one of the aforementioned Claims were scheduled by the Debtor on Doc 15 as "disputed debts, or as joint debts with other obligors. After engaging experienced bankruptcy counsel, engaging a second counsel, having the benefit of reviewing several proof of claims, reviewing several Adversary Proceedings filed against him, and giving testimony at several Creditors' Meetings, the Debtor amended Doc 15 on November 1, 2018 (the "Amendment"). At that time, the Debtor failed to remove from his Schedules the fifty (50) Claims he now disputes because these claimants were not actually creditors of his. Nor did the Amendment assert that he actually disputed the scheduled debt. The Debtor is now asserting that he has no personal liability for all fifty (50) claims, and any liability for the Claims is that of the various entities owned or controlled by him and his family.

Through testimony obtained at the Debtor's Creditors' Meetings, the Debtor has testified that he and or members of his immediate family held interests in over a dozen entities pre-petition, many of which were incorporated in Delaware and states other than Rhode Island. The Debtor admits that for a substantial number of these entities, he managed and controlled operations as well as had signature authority over their respective bank accounts. Many of the entities were either defunct, or otherwise had their corporate charters revoked as of the date of the bankruptcy filing.

The Debtor further testified that employees were hired at his direction. As substantial number of the Claims assert that as a condition of employment, the Debtor solicited, and the claimants paid, at the direction of the Debtor, substantial sums to entities in which the Debtor or his family members held an interest, and exclusively controlled. Upon information and belief, only one of entities in which the Debtor held an interest, produced or sold a product, or had any sales of any kind. Rather, all of the income/investments paid into these entities were from private investors and/or employees. The sums raised were used, among other things, to pay the operating expenses of the entities, including but not limited to compensation of employees and operating expenses of the entities, as well as “Management Fees” due the Debtor and/or entities controlled by the Debtor.

Subpoenaed bank records obtained by the Trustee indicate that substantial funds paid to these entities by the holders of the Claims were, at the direction of the Debtor, used to pay the personal living and entertainment expenses of the Debtor, and his family members, and were also transferred to other entities owned and controlled by the Debtor and his family. The Debtor has testified either there are minimal accounting records evidencing the payment of the “Management Fees” or the records, if they existed, are now missing. Substantially all of the Claims to which the Debtor has objected assert that they have been defrauded by the Debtor as their funds were solicited by the Debtor and paid to entities owned and or controlled by the Debtor at the direction of the Debtor.

Pursuant to 11 U.S.C. §502 (a), a claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects. Objections to a claim must be filed in good faith, and are subject to the requirements of Fed.R.Bankr.P.9011(b). See: In re MacFarland, 462 B.R. 857 (Bkrtcy S.D. Fla 2011). Fed. R.Bankr.P 9011(b) provides that when

filing a:

“petition, pleading, written motion or other paper, an attorney”... “is certifying that to the best of the person’s knowledge, information and belief, formed after an inquiry under the circumstances, (emphasis added)

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidential support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on lack of information or belief.”

Upon the filing of each of the Claims to which the Debtor has objected, the undersigned, or her counsel, have communicated with substantially all Claimants, and have requested that each provide documentation to support each claim. The Trustee and her counsel have received extensive documentation for the basis of each of the Claims including copies of pleadings filed in various courts throughout the country. The Debtor fails to allege in his objections that he has communicated with the Claimants, or has conducted his own due diligence regarding the basis of the Claims to which he has objected. To fail to do so, flies in the face of the obligations and intent of Fed. R. Bankr. P 9011(b).

Considering the fact that the Debtor originally scheduled each of the Claims on his sworn bankruptcy schedules as “contingent,” and not as “disputed,” and considering the Debtor has not even alleged that he or his counsel has attempted to request additional support for each of the Claims to which he has objected, the undersigned asserts that the Objections before this Court

should be overruled as they violate Fed. R. Bankr. P 9011(b). The Trustee asserts this objection to the Debtor's Objections to the Claims for the protections of the claimants, many of which are proceeding pro se, and reserves her right to amend her Objection as documents are subsequently obtained to seek sanctions forthwith.

WHEREFORE, for the foregoing reasons, the Trustee respectfully Objects to the Debtor's Objection to the Claims referenced herein; requests that the resolution of said Objections be held in abeyance until such time as the Trustee concludes the Meeting of Creditors, completes her discovery in association therewith; and this Court renders a final decision as to the adversary proceedings filed by several of said Claimants asserting Objections to Discharge; and grant such other and further relief as this Court deems just and appropriate.

Respectfully submitted,
/s/ Stacy B. Ferrara
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Dated: January 22, 2019

ADMINISTRATIVE GENERAL ORDER-- FORM B

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND**

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In re:	:	
DAVID W. WAGNER	:	BK No. 18-10071
Debtor	:	Chapter 7

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CERTIFICATE OF SERVICE

I hereby certify that on **January 22, 2019**, I electronically filed *Trustee's Response to Debtor's Objections to Proof of Claims* with the Clerk of the Bankruptcy Court for the District of Rhode Island using the CM/ECF System. The following participants have received notice electronically: **US Trustee; Russell D. Raskin; Catherine V. Eastwood; Elizabeth A. Lonardo; Peter J. Furness; Matthew J. McGowan; Charles A. Pisaturo, Jr.; Jeffrey C. Ankrom; Joseph A. Farside, Jr; Vincent A. Indeglia; and Lynda L. Laing** and I hereby certify that I have mailed by United States Postal Service, postage pre-paid, the document and a copy of the Notice of Electronic Filing to the following non CM/ECF participants to all parties on the attached matrix, and the following:

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